IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4861 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARSHADBHAI CHOTUBHAI DESAI CHIEF TRUSTEE & PRESIDENT - Petitioner(s)

Versus

MAMLATDAR & 3 - Respondent(s)

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Appearance :

MR MB GANDHI for Petitioner(s) : 1,MR HD VASAVADA for Petitioner(s) : 1,
MR JAYANT P BHATT for Respondent(s) : 1,
Ms. Archana Raval, AGP for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/01/2006

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the grant of licence in favour of respondent No.4 under the Bombay Cinema Rules, 1954. It appears that while admitting the present Special

Civil Application, the learned Single Judge of this Court [Coram: Ms. Justice R.M. Doshit, J.] by order dated 9.12.1999 by way of interim relier directed that licence given to the respondent and extended under the order dated 28th June 1999 shall not be further extended without express permission of this Court. It appears from the record that being aggrieved and dissatisfied with the said interim order the respondent No.4 licencee preferred Letters Patent Appeal No. 14 of 2004 and as the said interim order was granted by the learned Single Judge without hearing the respondent No.4 licencee as the learned advocate appearing on behalf of the respondent No.4 was not present at the relevant time the Division Bench of this Court by order dated 24.1.2000 allowed the said appeal only against the order granting interim relief without expressing any opinion on merits of the matter and set aside the interim order and directed that the learned Single Judge should hear the matter of interim relief and pass an appropriate order after affording opportunity of hearing to the parties. It appears that thereafter the petitioner preferred Civil Application No. 755 of 2000 for amendment in the main Special Civil Application and the same came to be allowed. It appears that thereafter the petitioner has preferred another application being Civil Application No. 2599 of 2000 for interim relief suspending further renewal of licence and/or cancelling the licence which came to be renewed and the said Special Civil Application came to be disposed of by the learned Single Judge

[Coram: Mr. M.S. Shah, J.] by order dated 30th June 2000 directing that any renewal of the licence shall be subject to the result of the petition.

2. It appears from the record and after hearing the learned advocate appearing on behalf of the parties, more particularly, Shri MB Gandhi, learned advocate appearing on behalf of the petitioner and Ms. Archana Raval, learned AGP (learned advocate on behalf of respondent No.4, Shri Bhatt has chosen to remain absent) that the main objection against grant of licence in favour of respondent No.4 seems to be that in the vicinity of cinema house a temple and a school are situated and the objections raised by the present petitioner and others have been mainly rejected on the ground that they had not raised the objections earlier and that substantive objections raised by the objectors are not considered. Shri Gandhi,learned advocate appearing for the petitioner has submitted that merely because the petitioner had earlier not objected, in that case also whenever the question of renewal of licence is there it is required to be considered as if it is a fresh licence and for each renewal the objections are required to be considered. Shri Gandhi, for the petitioner has further submitted that in fact objections invited from the petitioner and others which were already there had not been considered and dealt with and even otherwise under the Act and the Rules even assuming that there are no objections in that case also no licence could have been issued by the licensing

authority in favour of respondent No.4 particularly when there is a temple and/or school within a particular area. Therefore, while submitting that it is immaterial whether the objections are submitted or not, he has contended that in fact it is for the licensing authority to consider the same. He has therefore requested to allow the present Special Civil Application.

3. Having heard Shri Gandhi, learned advocate appearing for the petitioner and Ms. Archana Raval, learned AGP, considering the fact that the licence has been renewed from time to time, it will not be proper to disturb the same at this stage. However, if the licensing authority is directed to consider the objections submitted by the petitioner and other persons at the time of renewal of the existing licence, it will meet the ends of justice. Under the circumstances, the following directions are issued.

4. The appropriate authority, i.e., respondents No. 1 to 3 are directed to consider the objections, if any, which were already submitted earlier by the petitioner and other persons, while renewing the licence if any in existence at present in favour of respondent No.4 and at the time of future renewal also and are further directed to strictly follow and comply with the provisions of the Bombay Cinema Act and the Rules thereof in accordance with law and on merits and without in any way being influenced by the earlier orders and/or grant of earlier licence.

5. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.